STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCIAL REGULATION

In the Matter of: Kelly Mortgage, Inc. NMLS #1594896, Tracy Kelly NMLS# 24660 Respondents	Case No. M-23-0049 FINAL ORDER TO CEASE AND DESIST, ORDER ASSESSSING CIVIL PENALTIES, AND CONSENT TO ENTRY OF ORDER

WHEREAS the Director of the Department of Consumer and Business Services for the State of Oregon (hereinafter "the Director") conducted an investigation of Kelly Mortgage, Inc. ("Kelly Mortgage") and determined that Kelly Mortgage engaged in activities constituting a violation of ORS 86A.100 et seq. and OAR 441-850-0005 through 441-885-0010 (collectively, "the Oregon Mortgage Lender Law"), and having investigated Tracy Kelly ("Kelly") and determined that Kelly engaged in activities constituting a violation of ORS 86A.200 to 86A.239 and OAR 441-850-0005 through 441-885-0010 (collectively, the "laws regulating Oregon mortgage loan originators"); and

WHEREAS Kelly Mortgage and Kelly wish to resolve and settle this matter with the Director,

NOW THEREFORE, as evidenced by the authorized signatures subscribed on this order, Kelly Mortgage and Kelly hereby CONSENT to entry of this order upon the Director's Findings of Fact and Conclusions of Law as stated hereinafter:

/ / /

/ / /

/ / /

Division of Financial Regulation
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

FINDINGS OF FACT

The Director FINDS that:

I. Entities and Relevant Parties

1. Kelly Mortgage and Realty, Inc. was a California corporation with a principal place of business located at 92 Argonaut, Suite 215, Aliso Viejo, CA 92656. Kelly Mortgage and Realty, Inc. was licensed as an Oregon mortgage banker/broker from September 21, 2006 through July 11, 2017, Nationwide Multistate Licensing System ("NMLS") #3160.

2. Kelly was Kelly Mortgage and Realty, Inc.'s owner, qualifying individual, and mortgage loan originator ("MLO").

3. Kelly has been licensed as an Oregon MLO since December 7, 2010, NMLS #24660.

4. In 2015, the Division issued a warning letter to Kelly Mortgage and Realty, Inc. for failure to supervise, specifically related to possible unlicensed MLO activity and concerns about the authenticity of signatures on several loan documents.

5. Kelly Mortgage is a California corporation with a principal place of business located at 23011 Moulton Parkway #F3, Laguna Hills, California 92653.

6. Kelly Mortgage has been licensed as an Oregon mortgage banker/broker since June 23, 2017, NMLS #1594896.

7. Kelly is Kelly Mortgage's president, qualifying individual, and its sole Oregon licensed MLO.

8. At all times material, Mike Roque worked for Kelly Mortgage as a loan processor.

9. At all times material, Kris Monte worked for Kelly Mortgage as the Operations Manager for the Manufactured Housing Division. He has been licensed as a California MLO since May 15, 2013.

10. Cal-Am Properties, Inc. ("Cal-Am) is a California corporation with a principal place of business located at 385 Clinton Street, Costa Mesa, California 92626.

Division of Financial Regulation
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

11. At all times material, Cal-Am has been licensed as an Oregon manufactured structure dealer but has never been licensed as an Oregon mortgage banker/broker.

12. At all times material, Christina McKinley worked in sales for Cal-Am and was licensed as an Oregon real estate broker.

13. At all times material, Craig Giltz worked as a District Salesperson for Cal-Am.

14. At all times material, Jane Lazja worked as a National Sales Coordinator for Cal-Am.

15. Neither Roque, Monte, McKinley, Giltz, nor Lajza have ever been licensed as an Oregon MLO.

16. In 2022, the Washington Division of Financial Institutions settled an enforcement case with Kelly Mortgage for various mortgage-related compliance violations. Kelly Mortgage was fined for the activity.

II. The Brothers' 2019 Loan Transaction

17. In September 2019, two brothers ("NF" and "JF," collectively "The Brothers") were evicted from their rental property and moved into a motel.

18. In December 2019, they saw a Craigslist advertisement that listed a new double-wide manufactured home for sale in a Cal-Am owned park in Salem, Oregon.

19. The Brothers were interested in the home, so they responded to the ad and requested a viewing. They were put in touch with Christina McKinley ("McKinley") of Cal-Am.

20. The Brothers asked McKinley how much the payments would be, and she quoted a monthly loan payment of approximately $1,200.

21. This seemed like something they could afford, so they decided to move forward and purchase the home together.

22. The Brothers relied heavily on the information and guidance they received from McKinley and Craig Giltz ("Glitz") of Cal-Am since they were both inexperienced and first-time home buyers. They both report they have learning disabilities, and that they

Division of Financial Regulation
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

communicated this information to Cal-Am.

a. Loan Origination

23. The monthly payment that McKinley quoted The Brothers was for a loan through Kelly Mortgage that was funded by Cal-Am.

24. The Brothers did not fill out a loan application themselves. Instead, they said that McKinley and Giltz went online and completed the application for them and later brought them a printed copy for their signature.

25. The Division obtained the Brothers' loan transaction files that were maintained independently by Kelly Mortgage, Cal-Am, and by the Brothers.

26. Giltz completed an Authorization to Order Credit Report form for the transaction. The form states that "I/We the undersigned borrower(s) hereby authorize Kelly Mortgage Inc. to order a credit report in connection with my mortgage application" and was signed by The Brothers. Giltz filled out the payment information using a credit card in his name.

27. Tracy Kelly is listed on the application as the loan's mortgage loan originator ("MLO"). Her electronic signature appears on the loan application, but Kris Monte's ("Monte") email is listed as the contact email address, kris@kellymtg.com.

28. Kelly's email address is tracy@kellymtg.com.

29. The Division obtained Kelly Mortgage files from other borrowers who were later sued for eviction by Cal-Am from the period of April 2018 through August 2020 where Kelly acted as the MLO. Kelly's email address is listed as the contact email address on those files.

30. The Brothers stated that they had no contact with Kelly during the entire transaction. They recalled receiving a few emails from "Mike [Roque]," who they believed was associated with Kelly Mortgage.

31. There was no documented communication, electronic or otherwise, between Kelly and the Brothers or between Kelly and Cal-Am.

Division of Financial Regulation
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

32. Kelly's email address does not appear in any of The Brothers' loan files.

33. The only documented communication from a Kelly Mortgage representative on the transaction is from Roque. Monte was also included on several emails.

34. On December 24, 2019, Roque emailed Jane Lajza ("Lajza") at Cal-Am to request the terms for The Brothers' loan. Lajza obtained the loan terms (5.99%, 25 years) from a colleague and forwarded them to Roque.

35. Also on December 24, 2019, Roque sent the initial transaction disclosures to The Brothers and suggested they call if him if they had any questions.

36. NF stated that it was always their understanding, based on statements from Cal-Am employees, that their monthly housing expenses would be approximately $1,200. Their monthly payment was actually $1,956, which would have left them with almost no money for living expenses.

37. While monthly payments of $1,956 appears on page 2 of the loan application under the Monthly Housing Expense section, other loan documents show the total estimated monthly payment as $1,241. The Brothers reported there were no discussions about these additional monthly costs.

38. On December 26, 2019, McKinley emailed Lajza about alternative income verification sources for The Brothers, and Lajza replied, "Let me see what KM [Kris Monte]/Mike [Roque] says." Later that day, Lajza emailed Roque and Monte to advise that the disclosures would be in soon.

39. Kelly and Monte were interviewed for the Division's investigation, and the statements contained herein were made in the course of that interview.

40. Kelly stated that Kelly Mortgage and Cal-Am have a business arrangement to accommodate manufactured structure buyers to finance their purchases. When potential buyers visit a Cal-Am owned park, Cal-Am provides a sheet with the loan terms and takes the buyer's information and documentation. Kelly added "Cal-Am provides everything."

Division of Financial Regulation
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

41. She confirmed that Cal-Am pulls credit and sends it to Kelly Mortgage. Cal-Am provides the borrower with a portal link to Kelly Mortgage's website for the borrower to fill out a loan application.

42. Monte reported that he did not work on The Brothers' loan and did not know why his email address is listed on their application and other documents as the MLO contact.

43. Although she could not recall speaking to The Brothers specifically, Kelly said that she has a conversation with every borrower she deals with.

b. Loan Underwriting

44. Kelly Mortgage prepared The Brothers' file for submission, review, and approval to Cal-Am.

i. NF

45. In December 2019, NF was receiving $979 in monthly Social Security disability benefits for himself and several hundred dollars for his two minor children. No other current or prior employment was listed.

46. To calculate income for financing, Social Security benefits can be increased, or "grossed up," and NF's income was grossed up.

47. NF's credit score was uniformly considered by credit reporting agencies to be "poor." He filed for Chapter 7 bankruptcy, which was discharged in 2013.

48. NF owes $11,790 in student loans, and no payment history is listed. NF reported that his students loans were either not due yet, or were subject to an income-based repayment plan, and since his only income was from social security, he did not need to make payments yet.

49. Kelly Mortgage prepared an Underwriting Submission Checklist. For NF, six medical collection accounts and two derogatory accounts were listed. The checklist also showed that NF had five trade lines that were paid as agreed. In fact, four of those accounts were NF's student loans, for which there is no payment history.

Division of Financial Regulation
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

ii. JF

50. JF was receiving income from Public Partnerships to provide in-home care to his brother.

51. At the time of the transaction, he had worked in this role for one year and two months. No other prior employment history was listed.

52. Employment records show that JF's monthly income in December 2019 was $2,328. Child support of $930 was garnished from his check every month.

53. He had one derogatory trade account for child support arrearage, and five of his accounts had been sent to collections.

54. JF's credit could not be scored. If a borrower does not have a credit score, per the Cal-Am guidelines, two years of rental history must be obtained.

55. The Brothers were evicted from their prior rental three months before this transaction. They did not have two years of continuous, positive rental history, and NF was still paying fees on their prior rental. From 2012-2019, NF had been evicted five times, and JF once.

56. The Uniform Underwriting and Transmittal Summary that Kelly Mortgage completed incorrectly lists JF's child support obligation as $465 per month. In fact, JF's pay verification shows that he received two paychecks a month and $465 was garnished from each check, totaling $930 per month.

57. The Underwriting Submission Checklist shows that the Brothers' file did not meet the underwriting standards.

58. Kelly and Monte responded that The Brothers' debt-to-income ratio was close; these are internal guidelines, and they were hoping for an investor override from Cal-Am.

iii. Asset Depletion Underwriting

59. Kelly and Monte further stated that Kelly Mortgage considers several factors in determining the borrowers' ability to repay, including their assets and reserves. They also

Division of Financial Regulation
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

felt that The Brothers could have qualified by using asset depletion underwriting.

60. On December 19, 2019, just days before the start of this transaction, The Brothers received a settlement from a civil personal injury lawsuit, and these funds were deposited into newly-opened bank accounts. JF received approximately $94,000, and $77,000 went to JF.

61. Cal-Am's lender guidelines for asset depletion require two months of bank statements and recent account history. Since The Brothers' accounts were so new, they did not have two months of statements, and there was no recent account history beyond several days.

62. The Office of the Comptroller of the Currency ("OCC") issued a bulletin on July 23, 2019 (Bulletin #2019-36) ("Bulletin") that included recommendations and warnings on utilizing asset depletion underwriting. The Bulletin noted "ADU (asset depletion underwriting) is often used to underwrite mortgage loans to high-net worth applicants who acquire and retain significant liquid assets but do not have sufficient cash flow to qualify for a mortgage under standard income attribution criteria."

63. The Bulletin noted that Fannie Mae and Freddie Mac lenders are permitted to use ADU to underwrite mortgage loans based on employment-related retirement assets or certain other assets of applicants who are near retirement.

64. The Bulletin further noted that, "More recently, examiners have identified greater use of ADU that is not supported by risk management practices commensurate with ADU credit risk."

65. Additionally, the OCC expects that "prudently underwritten real estate loans reflect all relevant credit factors, including the overall creditworthiness of the borrower…"

66. Unlike a retirement account or investment product, The Brothers' settlement payment was a one-time event, which would not be replenished.

67. Kelly also stated that Kelly Mortgage considered the length of time on the job in

Division of Financial Regulation
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

evaluating the ability to repay. JF had only been working for a little over one year. This is short of the two-years of verifiable income history requirement in Cal-Am's lender guidelines.

68. Kelly added that credit review and existing debts are also considered. NF's credit score was rated "poor" by the reporting agencies, and JF's credit could not be scored. NF had more than $11,000 in student loan debt, and JF's full child support obligation was not accurately listed in the underwriting evaluation.

69. Cal-Am's guidelines allow for the exclusion of student loan debt if a letter from the lender is obtained showing that the loan is deferred for 10 months or more. The file does not include documentation from NF's lender or a verification of a deferral.

c. Closing

70. The Brothers reported that they signed the final closing documents for their loan on December 31, 2019.

71. They did not receive copies of the documents on closing day. When they received copies several dates later, they noticed that, on at least one document, the date accompanying their signatures had been changed from December 31 to December 30.

72. NF stated that they did not sign anything on December 30, nor were they ever scheduled to close that day. Closing was only set for December 31.

73. Text messages between NF and McKinley confirmed that closing was scheduled for, and took place on, December 31.

74. The file obtained from Cal-Am includes a notation stating that the parties began closing on December 30, when they discovered that the insurance policy was not effective until December 31, so they had to stop and continue the following day.

75. The Cal-Am file contains two signature pages for the Purchase Money Security Agreement and Promissory Note. One signature page includes The Brother's signatures, dated December 30, 2019, and Kelly's electronic signature with the typed date of

Division of Financial Regulation
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

December 30, 2019. The other signature page is only signed by The Brothers and is dated December 31, 2019.

76. The Purchase Money Security Agreement and Promissory Note from the Kelly Mortgage file only includes one signature page that is signed by The Brothers and Kelly, dated December 31, 2019. The date and Kelly's signature are handwritten.

77. On January 3, 2020, Roque sent an email to several Cal-Am employees, including Lajza and McKinley, requesting that The Brothers change the date on some of the closing documents. He stated, "The dates don't match up. Please have the buyers date for 12/30."

78. The Brothers did not receive this message or the request and did not change the date on the closing documents.

79. A handwriting expert, retained by The Brothers, reviewed both of the Purchase Money Security Agreement and Promissory Note and several other closing documents that The Brothers and Kelly had signed.

80. Based on his review and application of forensic examination tools, the expert concluded that the promissory note dated December 30, 2019 was not authentic, specifically, that the date was altered from December 31, 2019 to December 30, 2019.

CONCLUSIONS OF LAW

The Director CONCLUDES that:

81. By allowing individuals who were not licensed as MLOs to engage in loan origination activity on The Brothers' loan (taking a loan application, discussing rates and terms, pulling credit), Kelly Mortgage failed to supervise diligently and control the mortgage-related activities on a transaction that it brokered, in violation of ORS 86A.115(16).

82. By allowing and enabling individuals who were not licensed as MLOs to engage in loan origination activity on The Brothers' loan (taking a loan application, discussing rates and terms, pulling credit), Kelly violated ORS 86A.239(9).

Division of Financial Regulation
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

83. By failing to properly and accurately prepare The Brothers' file for underwriting and submission to Cal-Am, Kelly Mortgage demonstrated negligence or incompetence in performing any act for which the licensee is required to hold a license, in violation of ORS 86A.115(15).

ORDERS

NOW, THEREFORE, THE DIRECTOR ISSUES THE FOLLOWING:

ORDERS:

84. The Director, pursuant to ORS 86A.127, hereby ORDERS Kelly Mortgage to Cease and Desist from violating ORS 86A.115(16) and ORS 86A.115(15).

85. The Director, pursuant to ORS 86A.224(2)(a), hereby ORDERS Kelly to Cease and Desist from violating ORS 86A.239(9).

86. The Director, pursuant to ORS 86A.992, may assess civil penalties of up to $5,000 per violation of the Oregon Mortgage Lender Law. Pursuant to this provision, as authorized by ORS 86A.992, the Director hereby ORDERS Kelly Mortgage to pay CIVIL PENALTIES totaling $10,000 for the violation of ORS 86A.115(16) and ORS 86A.112(15).

87. The Director SUSPENDS the collection of $3,000 in CIVIL PENALTIES assessed to Kelly Mortgage, provided that, in the five years following the effective date of this Order, Kelly Mortgage does not violate ORS 86A.115(16) and ORS 86A.115(15), or the terms of this Order. If Kelly Mortgage fails to satisfy this condition, the remaining $3,000 in civil penalties will become immediately due and owing. Otherwise, the Director will waive the suspended portion of the civil penalties five years after the effective date of this Order.

88. The Director, pursuant to ORS 86A.224(3)(a), may assess civil penalties of up to $5,000 per violation of the laws regulating Oregon mortgage loan originators. Pursuant to this provision, the Director hereby ORDERS Kelly to pay CIVIL PENALTIES of $5,000

Division of Financial Regulation
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

for the violation of ORS 86A.239(9).

89. The Director SUSPENDS the collection of $1,500 in CIVIL PENALTIES assessed to Kelly, provided that, in the five years following the effective date of this Order, Kelly does not violate ORS 86A.239(9), or the terms of this Order. If Kelly fails to satisfy this condition, the remaining $1,500 in civil penalties will become immediately due and owing. Otherwise, the Director will waive the suspended portion of the civil penalties five years after the effective date of this Order.

90. This Order is a "Final Order" under ORS 183.310(6)(b). Subject to that provision, entry of this Order does not limit other remedies available to the Director under Oregon law to enforce this Order or to take action for violations of this Order or of the Oregon Mortgage Lender Law that are not covered by this Order.

Dated this 27th day of March , 2024.

Andrew Stolfi, Director
Department of Consumer and Business Services

/s/ Dorothy Bean
Dorothy Bean, Chief of Enforcement
Division of Financial Regulation

[The rest of this page is intentionally left blank.]

Division of Financial Regulation
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

ENTITY CONSENT TO ENTRY OF ORDER

I, Tracy Kelly, state that I am an officer of Kelly Mortgage, and I am authorized to act on its behalf. I have read the foregoing order, and I know and fully understand the contents hereof. I have been advised of the right to a hearing and of the right to be represented by counsel in this matter. Kelly Mortgage voluntarily and without any force or duress consents to the entry of this order, expressly waiving any right to a hearing in this matter. Kelly Mortgage understands that the Director reserves the right to take further actions to enforce this order or to take appropriate action upon discovery of other violations of the Oregon Mortgage Lender Law. Kelly Mortgage will fully comply with the terms and conditions stated herein.

Kelly Mortgage further assures the Director that neither Kelly Mortgage nor its officers, directors, employees, or agents will affect mortgage transactions in Oregon unless such activities are in full compliance with the Oregon Mortgage Lender Law. Kelly Mortgage understands that this Consent Order is a public document.

President
Office held:

State of CA

County of Orange

Signed or attested before me on this 1st day of March, 2024.

/s/ MA Veronica B. Rezaba

Notary Public

*Separate Notary Acknowledgement Form completed

Division of Financial Regulation
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

CONSENT TO ENTRY OF ORDER

I, Tracy Kelly, state that I have read the foregoing order, and I know and fully understand the contents hereof. I have been advised of the right to a hearing and of the right to be represented by counsel in this matter. I voluntarily and without any force or duress consent to the entry of this order, expressly waiving any right to a hearing in this matter. I understand that the Director reserves the right to take further actions to enforce this order, or to take appropriate action upon discovery of other violations of the laws regulating Oregon mortgage loan originators. I will fully comply with the terms and conditions stated herein.

I further assure the Director that I will only effect mortgage transactions in Oregon if such activities are in full compliance with the laws regulating Oregon mortgage loan originators. I understand that this Consent Order is a public document.

I understand that this Order is a public document.

/s/ Tracy Kelly
Tracy Kelly

State of CA

County of Orange

Signed or attested before me on this 1st day of March, 2024.

/s/ MA Veronica B. Rezaba

Notary Public

*Separate Notary Acknowledgement Form completed

Division of Financial Regulation
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387